

AMENDED IN SENATE JUNE 19, 2002
AMENDED IN ASSEMBLY JANUARY 7, 2002
CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 728

Introduced by Assembly Member Correa

February 22, 2001

~~An act to amend Section 7071.11 of the Business and Professions Code, relating to contractors. An act to amend Sections 7085 and 7091 of, to add Section 7122.2 to, and to repeal Section 7085.8 of, the Business and Professions Code, relating to contractors.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 728, as amended, Correa. Contractors: *arbitration of disputes.*

Existing law, the Contractors' State License Law, provides for arbitration of disputes arising out of cases filed with or by the Contractors' State License Board. The registrar is the executive officer who carries out the board's administrative duties and tasks delegated by the board and who is authorized to issue a citation for a violation of specified provisions that may result in the assessment of a civil penalty.

Existing law authorizes the registrar to refer specified complaints where the licensee is in good standing at the time of the referral to arbitration, with the concurrence of both the licensee and the complainant, if there is evidence that the complainant has suffered or is likely to suffer damages greater than \$5,000 and less than \$50,000. The registrar is required to refer these complaints to arbitration where the licensee is in good standing at the time of the referral if the contract price is equal to or less than \$5,000 or if the demand for damages is

equal to or less than \$5,000. Existing law also requires that an accusation or citation against a licensee be filed by the registrar within a specified time period.

This bill would change the amount in dispute requirement for mandatory arbitration to \$7,500 or less. The bill would require that referrals to the arbitration program be subject to the same statute of limitation as accusations or citations by the registrar. The bill would delete the requirement that a licensee be in good standing at the time of a referral in order to qualify for referral to arbitration. The bill would provide that the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration does not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with an award rendered as a result of an arbitration referral.

~~Existing law requires the surety of a contractor to notify the Registrar of Contractors of any payment on any claim against the contractor's bond within 30 days of making the payment. Existing law, with specified exceptions, provides that any judgment or admitted claim against, or good faith payment from, a bond shall constitute grounds for disciplinary action against a contractor by the Contractors' State License Board.~~

~~This bill would provide that the surety is not required to notify the Registrar of Contractors of any judgment or admitted claim against, or good faith payment from, a bond, if the contractor has, in writing, timely instructed the surety not to make payment on certain specific grounds.~~

~~This bill, with respect to payments made by a surety that are reported to the Registrar of Contractors, would provide that the contractor's license shall be suspended by operation of law if proof of payment of the amount owed to the surety has not been made by the contractor within 90 days after the contractor is notified to that effect by the Contractors' State License Board. This bill would also provide that a contractor's license may not be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the contractor's bond remains unsatisfied or while the surety remains unreimbursed for loss and expense sustained on the bond. The bill would provide that these license suspension provisions shall not apply if the contractor has filed for bankruptcy.~~



Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 7071.11 of the Business and Professions~~

*SECTION 1. Section 7085 of the Business and Professions
Code is amended to read:*

7085. (a) After investigating any verified complaint alleging
a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and
any complaint arising from a contract involving works of
improvement as defined in Section 7151 and finding a possible
violation, the registrar may, with the concurrence of both the
licensee and the complainant, refer the alleged violation, and any
dispute between the licensee and the complainant arising
thereunder, to arbitration pursuant to this article, provided the
registrar finds that:

(1) There is evidence that the complainant has suffered or is
likely to suffer material damages as a result of a violation of
Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint
arising from a contract involving works of improvement as
defined in Section 7151.

(2) There are reasonable grounds for the registrar to believe
that the public interest would be better served by arbitration than
by disciplinary action.

(3) The licensee does not have a history of repeated or similar
violations.

(4) The licensee was in good standing at the time of the alleged
violation, ~~and is in good standing at the time of referral to
arbitration.~~

(5) The licensee does not have any outstanding disciplinary
actions filed against him or her.

(6) The parties have not previously agreed to private arbitration
of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section
2855 of the Civil Code.

For the purposes of paragraph (1), “material damages” means
damages greater than ~~five thousand dollars (\$5,000)~~ *seven
thousand five hundred dollars (\$7,500)* and less than fifty
thousand dollars (\$50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price is equal to or less than ~~five thousand dollars (\$5,000)~~ *seven thousand five hundred dollars (\$7,500)*, or the demand for damages is equal to or less than ~~five thousand dollars (\$5,000)~~ *seven thousand five hundred dollars (\$7,500)* regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

SEC. 2. *Section 7085.8 of the Business and Professions Code is repealed.*

~~7085.8. Any action of the registrar issued pursuant to this article shall be subject to Section 7013.~~

SEC. 3. *Section 7091 of the Business and Professions Code is amended to read:*

7091. (a) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action. An accusation or citation against a licensee shall be filed *or a referral to the arbitration program outlined in Section 7085 shall be referred* within four years after the patent act or omission alleged as the ground for disciplinary action *or arbitration* or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

(b) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action. An accusation and citation against a licensee shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation

1 may be filed within two years after the discovery by the registrar
2 or by the board of the alleged facts constituting the fraud or
3 misrepresentation prohibited by Section 7112. As used in this
4 section “latent act or omission” means an act or omission that is
5 not apparent by reasonable inspection.

6 (c) An accusation regarding an alleged breach of an express,
7 written warranty for a period in excess of the time periods
8 specified in subdivisions (a) and (b) issued by the contractor shall
9 be filed within the duration of that warranty.

10 (d) The proceedings under this article shall be conducted in
11 accordance with the provisions of Chapter 5 (commencing with
12 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
13 Code, and the registrar shall have all the powers granted therein.

14 (e) Nothing in this section shall be construed to affect the
15 liability of a surety or the period of limitations prescribed by law
16 for the commencement of actions against a surety or cash deposit.

17 *SEC. 4. Section 7122.2 is added to the Business and*
18 *Professions Code, to read:*

19 *7122.2. Notwithstanding Section 7068.2 or any other*
20 *provisions of this chapter, the disassociation of any qualifying*
21 *partner, responsible managing officer, or responsible managing*
22 *employee from a license that has been referred to arbitration*
23 *pursuant to Section 7085 shall not relieve the qualifying partner,*
24 *responsible managing officer, or responsible managing employee*
25 *from responsibility for complying with the award rendered as a*
26 *result of an arbitration referral. Section 7122.5 shall apply to any*
27 *qualifying partner, responsible managing officer, or responsible*
28 *managing employee of a licensee that fails to comply with an*
29 *arbitration award once it is rendered.*

30 ~~Code is amended to read:~~

31 ~~7071.11. (a) A copy of the complaint in a civil action~~
32 ~~commenced by a person claiming against a bond required by this~~
33 ~~article shall be served by registered or certified mail upon the~~
34 ~~registrar by the clerk of the court at the time the action is~~
35 ~~commenced and the registrar shall maintain a record, available for~~
36 ~~public inspection, of all actions so commenced. The aggregate~~
37 ~~liability of a surety on a claim for wages and fringe benefits~~
38 ~~brought against any bond required by this article, other than a bond~~
39 ~~required by Section 7071.8, shall not exceed the sum of four~~
40 ~~thousand dollars (\$4,000). If any bond which may be required is~~

1 insufficient to pay all claims in full, the sum of the bond shall be
2 distributed to all claimants in proportion to the amount of their
3 respective claims. Any action, other than an action to recover
4 wages or fringe benefits, against a contractor's bond or a bond of
5 a qualifying individual filed by an active licensee shall be brought
6 within two years after the expiration of the license period during
7 which the act or omission occurred, or within two years of the date
8 the license of the active licensee was inactivated, canceled, or
9 revoked by the board, whichever first occurs. Any action, other
10 than an action to recover wages or fringe benefits, against a
11 disciplinary bond filed by an active licensee pursuant to Section
12 7071.8 shall be brought within two years after the expiration of the
13 license period during which the act or omission occurred, or within
14 two years of the date the license of the active licensee was
15 inactivated, canceled, or revoked by the board, or within two years
16 after the last date for which a disciplinary bond filed pursuant to
17 Section 7071.8 was required, whichever date is first. A claim to
18 recover wages or fringe benefits shall be brought within six
19 months from the date that the wage or fringe benefit delinquencies
20 were discovered, but in no event shall a civil action thereon be
21 brought later than two years from the date the wage or fringe
22 benefit contributions were due.

23 (b) When the surety makes payment on any claim against a
24 bond required by this article, whether or not payment is made
25 through a court action or otherwise, the surety shall, within 30 days
26 of the payment, notify the registrar of any judgment or admitted
27 claim against, or good faith payment from, a bond required by this
28 article except for those cases of good faith payment where the
29 licensee has, in writing, timely instructed the surety not to make
30 payment from the bond on his or her account, upon the specific
31 grounds that (1) the claim is opposed by the licensee, and (2) the
32 licensee has, in writing, previously directed to the surety a specific
33 and reasonable basis for his or her opposition to payment. The
34 notice shall contain, on a form prescribed by the registrar, the name
35 and license number of the contractor, the surety bond number, the
36 amount of payment, the statutory basis upon which the claim is
37 made, and the names of the person or persons to whom payments
38 are made.

39 (c) The licensee shall have 90 days from the date of notification
40 by the board to submit proof of payment of the actual amount owed

1 to the surety. By operation of law, the license shall be suspended
2 at the end of the 90 days if the payment of claim has not been
3 satisfied. The license may not be renewed, reissued, or reinstated
4 while any judgment or admitted claim in excess of the amount of
5 the bond remains unsatisfied. Further, the license may not be
6 renewed, reissued, or reinstated while any surety remains
7 unreimbursed for loss and expense sustained on any bond issued
8 for the licensee or for any entity of which an officer, director,
9 member, partner, or qualifying person was an officer, director,
10 member, partner, or qualifying person of the licensee while the
11 licensee was subject to disciplinary action under this section.

12 The licensee may provide the board with a notarized copy of an
13 accord reached with the surety to satisfy the debt in lieu of full
14 payment. By operation of law, failure to abide by the accord shall
15 result in the automatic suspension of any license to which this
16 section applies. A license that is suspended for failure to abide by
17 the accord can only be renewed or reinstated when proof of
18 satisfaction of all debts is made.

19 This subdivision shall not apply to a licensee when a bankruptcy
20 proceeding has been filed by the licensee.

21 (d) Legal fees may not be charged against the bond by the
22 board.

23 (e) In any case in which a claim is filed against a deposit given
24 in lieu of a bond by any employee or by an employee organization
25 on behalf of an employee, concerning wages or fringe benefits
26 based upon the employee's employment, claims for the
27 nonpayment shall be filed with the Labor Commissioner. The
28 Labor Commissioner shall, pursuant to the authority vested by
29 Section 96.5 of the Labor Code, conduct hearings to determine
30 whether or not the wages or fringe benefits should be paid to the
31 complainant. Upon a finding by the commissioner that the wages
32 or fringe benefits should be paid to the complainant, the
33 commissioner shall notify the registrar of the findings. The
34 registrar shall not make payment from the deposit on the basis of
35 findings by the commissioner for a period of 10 days following
36 determination of the findings. If, within the period, the
37 complainant or the contractor files written notice with the registrar
38 and the commissioner of an intention to seek judicial review of the
39 findings pursuant to Section 11523 of the Government Code, the
40 registrar shall not make payment, if an action is actually filed,

1 except as determined by the court. If, thereafter, no action is filed
2 within 60 days following determination of findings by the
3 commissioner, the registrar shall make payment from the deposit
4 to the complainant.

5 (f) Any action, other than an action to recover wages or fringe
6 benefits, against a deposit given in lieu of a contractor's bond or
7 bond of a qualifying individual filed by an active licensee shall be
8 brought within three years after the expiration of the license period
9 during which the act or omission occurred, or within three years
10 after the date the license was inactivated, canceled, or revoked by
11 the board, whichever first occurs. Any action, other than an action
12 to recover wages or fringe benefits, against a deposit given in lieu
13 of a disciplinary bond filed by an active licensee pursuant to
14 Section 7071.8 shall be brought within three years after the
15 expiration of the license period during which the act or omission
16 occurred, or within three years of the date the license of the active
17 licensee was inactivated, canceled, or revoked by the board, or
18 within three years after the last date for which a deposit given in
19 lieu of a disciplinary bond filed pursuant to Section 7071.8 was
20 required, whichever date is first. If the board is notified of a
21 complaint relative to a claim against the deposit, the deposit shall
22 not be released until the complaint has been adjudicated.